



U. S. Department of Justice

*United States Attorney
Northern District of Iowa*

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June 27, 2019

Glen Downey
Downey & Mundy, PLLC
303 East Court Avenue
Des Moines, Iowa 50309

Re: *United States v. Blake Anthony Gibbins*

Dear Mr. Downey:

This letter will serve as a first memorandum of a proposed plea agreement between the United States Attorney's Office for the Northern District of Iowa and Blake Anthony Gibbins, defendant. All references to the "United States" or "government" in this proposed plea agreement refer to the United States Attorney's Office for the Northern District of Iowa and to no other governmental entity. The government has made no prior plea offers in this case.

CHARGES AND PENALTIES

1. B6 Defendant will plead guilty to an Information that will charge one count of Assault on a Congressman, in violation of 18 U.S.C. § 351(e).
2. B6 Defendant understands that Count 1 of the Information is punishable by the following maximum penalties: (1) not more than 1 year imprisonment without the possibility of parole; (2) a fine of not more than \$100,000; (3) a mandatory special assessment of \$25; and (4) up to 5 years' probation.
3. B6 Defendant understands restitution and a term of supervised release following incarceration may be imposed in addition to any other sentence. Defendant further acknowledges that, if defendant violates, at any time, any condition of supervised release, defendant could be returned to prison for the full term of supervised release and the Court is not required to grant credit for any amount of time defendant may have successfully completed on supervised release. Defendant also understands the U.S. Sentencing Guidelines will provide advisory guidance to the Court in determining a sentence in this case.



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4. B6 At the time the guilty plea is entered, defendant will admit that defendant is guilty of the charge specified in Paragraph 1 of this agreement. The U.S. Attorney's Office for this District will file no additional Title 18 assault-related criminal charges based solely upon information now in our possession. If this office becomes aware of evidence of additional crimes warranting criminal prosecution, all information in our possession could be used in such a prosecution.

STIPULATION OF FACTS

5. B6 By initialing each of the following paragraphs, defendant stipulates to the following facts. Defendant agrees these facts are true and may be used to establish a factual basis for defendant's guilty plea, sentence, and any forfeiture. Defendant has been advised by defendant's attorney of defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410. Defendant waives these rights and agrees this stipulation may be used against defendant at any time in any proceeding should defendant violate or refuse to follow through on this plea agreement, regardless of whether the plea agreement has been accepted by the Court. Defendant agrees that the stipulation below is a summary of the facts against defendant and does not constitute all of the facts the government would be able to prove at trial and may be able to prove to the Court in accordance with this agreement.

B6 A. On March 22, 2019, at the Mineral City Mill & Grill in Fort Dodge, Iowa, defendant approached a table where the victim (U.S. Congressman Steve King) and others were seated. Defendant asked the victim if he was Steve King, when King replied in the affirmative, defendant intentionally threw a cup of water on Congressman King.

B6 B. At the time defendant threw the water on Congressman King, defendant knew King was a Member of Congress.

B6 C. Congressman King did not consent to having water thrown on him, and having water thrown on him was offensive to Congressman King.

B6 D. By throwing water on Congressman King, defendant willfully caused an offensive touching, and thereby an assault on Congressman King.

B6 E. Defendant acknowledges that his actions were wrong, and that he should not have thrown water on Congressman King.

SENTENCING PROVISIONS

6. 36 Defendant understands and agrees to be sentenced based on facts to be found by the sentencing judge by a preponderance of the evidence and agrees facts essential to the punishment need not be (1) charged in the Information; (2) proven to a jury; or (3) proven beyond a reasonable doubt. The Court may also consider other information concerning the background, character, and conduct of defendant.

7. 36 During plea negotiations the parties may have discussed how various factors could impact the Court's sentencing decision and the determination of the advisory sentencing guidelines range. The parties agree, however, that discussions did not result in any express or implied promise or guarantee concerning the actual sentence to be imposed by the Court. Defendant understands the Court is not bound by the stipulations of the parties, nor is it bound by the sentencing range as determined pursuant to the sentencing guidelines. This plea agreement provides for no guarantee concerning the actual sentence to be imposed. Defendant further understands defendant will have no right to withdraw defendant's guilty plea if the sentence imposed is other than defendant hoped for or anticipated.

8. 36 The parties stipulate and agree the United States Sentencing Guidelines should be applied, at least, as follows:

36 A. **Base Offense Level - Assault:** For Count 1, pursuant to USSG §2A2.3, the appropriate base offense level is 4.

36 B. **Acceptance of Responsibility (Chapter 3 adjustment):** The United States agrees for purposes of USSG §3E1.1(b) that defendant timely notified authorities of defendant's intention to enter a guilty plea.

If at the time of sentencing, the Court finds the defendant has accepted responsibility for his crime pursuant to USSG Section 3E1.1(a), then pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the United States agrees that it will recommend a sentence of probation. This recommendation is not binding on the Court.

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9. B6 Defendant, defendant's attorney, and the United States may make whatever comment and evidentiary offer they deem appropriate at the time of the guilty plea, sentencing, or any other proceeding related to this case, so long as the offer or comment does not violate any other provision of this agreement. The parties are also free to provide all relevant information and controlling authority to the Probation Office and Court for use in preparing and litigating adjustments, enhancements, or departures scored in the presentence report, including offering statements made by defendant at any time.

10. B6 The parties are free to contest or defend any ruling of the Court, unless otherwise limited by this agreement, on appeal or in any other post-conviction proceeding.

11. B6 Defendant understands that, pursuant to the Victim and Witness Protection Act, Title I of the Justice for All Act, and the regulations promulgated under the Act by the Attorney General of the United States:

- A. The victim of a crime is given the opportunity to comment on the offense and make recommendations regarding the sentence to be imposed. Defendant understands the victim's comments and recommendations may be different from those of the parties to this agreement.
- B. The government is required to consult with victims of serious crimes to obtain their views regarding the appropriate disposition of the case against defendant and to make any such information regarding sentencing known to the Court. Defendant understands any victim's opinions and recommendations may be different from those presented by the government.
- C. The government is required to "fully advocate the rights of victims on the issue of restitution unless such advocacy would unduly complicate the sentencing proceeding," and the Court is authorized to order restitution by defendant to victims of crime, including, but not limited to, restitution for property loss, personal injury, or death.

CONDITIONS OF SUPERVISION

12. B6 If probation or a term of supervised release is ordered, the parties are free to seek whatever conditions they deem appropriate.

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FINANCIAL MATTERS

13. B6 Defendant agrees to pay a special assessment of \$25 as required by 18 U.S.C. § 3013. Defendant may pay the special assessment to the Clerk of Court by using the enclosed payment coupon. Defendant or defendant's representative will send or deliver the special assessment payment to the U.S. District Clerk of Court, 320 Sixth Street, Third Floor, Sioux City, IA 51101. If payment is made in the form of a check or money order, it should be made out to the "U.S. District Clerk of Court."

The special assessment must be paid before this signed agreement is returned to the U.S. Attorney's Office. If defendant fails to pay the special assessment prior to the sentencing, defendant stipulates that a downward adjustment for acceptance of responsibility under USSG §3E1.1 is not appropriate unless the Court finds defendant has no ability to pay prior to the sentencing.

GENERAL MATTERS

14. B6 Defendant shall not violate any local, state, or federal law during the pendency of this agreement. Any law violation, with the exception of speeding or parking violations, committed by defendant will constitute a breach of this agreement and may result in the revocation of the entire agreement or any of its terms. Defendant or defendant's attorney shall notify this office within 48 hours if defendant is questioned, charged, or arrested for any law violation.

15. B6 If defendant violates **any** term or condition of this plea agreement, in **any** respect, the entire agreement will be deemed to have been breached and may be rendered null and void by the United States. Defendant understands, however, the government may elect to proceed with the guilty plea and sentencing. These decisions shall be in the sole discretion of the United States. If defendant does breach this agreement, defendant faces the following consequences: (1) all testimony and other information defendant has provided at any time (including any stipulations in this agreement) to attorneys, employees, or law enforcement officers of the government, to the Court, or to the federal grand jury may and will be used against defendant in any prosecution or proceeding; (2) the United States will be entitled to reinstate previously dismissed charges and/or pursue additional charges against defendant and to use any information obtained directly or indirectly from defendant in those additional prosecutions; and (3) the United States will be

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released from any obligations, agreements, or restrictions imposed upon it under this plea agreement.

16. 36 Defendant waives all claims defendant may have based upon the statute of limitations, the Speedy Trial Act, and the speedy trial provisions of the Sixth Amendment to the Constitution. Defendant also agrees any delay between the signing of this agreement and the final disposition of this case constitutes excludable time under 18 U.S.C. § 3161 et seq. (the Speedy Trial Act) and related provisions.

WAIVER OF APPEAL

17. 36 After conferring with defendant's attorney and after being advised of defendant's appeal rights, defendant knowingly and voluntarily waives defendant's right to appeal the conviction and the sentence imposed. Defendant also waives the right to file post-conviction relief actions, including actions pursuant to 28 U.S.C. § 2255, 28 U.S.C. § 2241, *coram nobis*, and motions to reconsider or reduce defendant's sentence. Should the United States Sentencing Commission and/or Congress in the future amend the Sentencing Guidelines to lower the guideline range that pertains to defendant's offenses and explicitly make such an amendment retroactive, the government agrees that it will not assert this waiver as a bar to defendant filing a motion with the district court pursuant to 18 U.S.C. § 3582(c)(2). However, if defendant files such a motion, the government reserves the right to oppose the motion on any other grounds, and it reserves the right to assert this waiver as a bar to an appeal from the district court's decision regarding the motion. Defendant retains the right to appeal or contest defendant's sentence in the following limited circumstances: (1) if the sentence is not in accordance with this plea agreement; (2) if the sentence imposed exceeds the maximum statutory penalty; and (3) if the sentence is constitutionally defective. This waiver does not, however, prevent defendant from challenging the effectiveness of defendant's attorney after conviction and sentencing. Defendant does not have any complaints at this time about the effectiveness of defendant's attorney. The waivers set out above relate to any issues that now exist or that may arise in the future. Defendant agrees to these waivers in order to induce the government to accept the provisions and stipulations of this plea agreement, to avoid trial, and to have defendant's case finally concluded. Defendant understands that, at the conclusion of the sentencing hearing, the Court will note defendant's appeal rights are limited by this waiver. No assurances or promises have been made by any party as to what defendant's ultimate sentence will be.

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ACKNOWLEDGMENT OF DEFENDANT'S UNDERSTANDING

18. B4 Defendant acknowledges defendant has read each of the provisions of this entire plea agreement with the assistance of counsel and understands its provisions. Defendant has discussed the case and defendant's constitutional and other rights with defendant's attorney. Defendant understands that, by entering a plea of guilty, defendant will be giving up the right to plead not guilty; to trial by jury; to confront, cross-examine, and compel the attendance of witnesses; to present evidence in defendant's defense; to remain silent and refuse to be a witness by asserting defendant's privilege against self-incrimination; and to be presumed innocent until proven guilty beyond a reasonable doubt. Defendant agrees defendant's attorney has represented defendant in a competent manner and has no complaints about that lawyer's representation. Defendant states defendant is not now on or under the influence of, any drug, medication, liquor, or other substance, whether prescribed by a physician or not, that would impair defendant's ability to fully understand the terms and conditions of this plea agreement.

19. B6 Defendant acknowledges defendant is entering into this plea agreement and is pleading guilty freely and voluntarily because defendant is guilty and for no other reason. Defendant further acknowledges defendant is entering into this agreement without reliance upon any discussions between the government and defendant (other than those specifically described in this plea agreement), without promise of benefit of any kind (other than any matters contained in this plea agreement), and without threats, force, intimidation, or coercion of any kind. Defendant further acknowledges defendant's understanding of the nature of each offense to which defendant is pleading guilty, including the penalties provided by law.



VERIFICATION

21. B6 This letter constitutes the entire agreement between the parties. No other promises of any kind, express or implied, have been made to defendant by

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the United States or its agents. No additional agreement may be entered into unless in writing and signed by all parties. The agreement will not be deemed to be valid unless and until all signatures appear where indicated below.

If this agreement is acceptable, please have your client indicate acceptance by placing initials on the line preceding each of the above paragraphs and by signing below where indicated. By initialing each paragraph and signing below, defendant acknowledges defendant has read, fully understands, and agrees to each paragraph of this agreement. Please return all enclosures, completed and signed, with this signed letter to the U.S. Attorney's Office.

Finally, please remember to pay the special assessment as agreed above.

Thank you for your cooperation.

Sincerely,

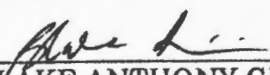
PETER E. DEEGAN, JR.
United States Attorney

By, s/ Timothy T. Duax

TIMOTHY T. DUAX
Assistant United States Attorney

ENCLOSURES:
Special Assessment Payment Coupon

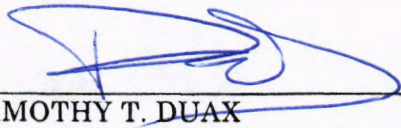
The undersigned defendant, with advice of counsel, accepts the terms of this plea agreement. The undersigned Assistant United States Attorney accepts the terms of the executed plea agreement.



BLAKE ANTHONY GIBBINS
Defendant

6-28-19

Date

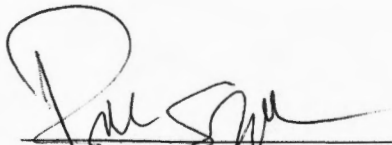


TIMOTHY T. DUAX
Assistant United States Attorney

9/23/19

Date

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A handwritten signature in black ink, appearing to read 'Glen Downey', is written over a horizontal line.

GLEN DOWNEY
Attorney for Defendant

Date